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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,722	09/06/2001	Stefan Grosse	10191/1728	9967
26646	7590	03/21/2006		
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				EXAMINER FULLER, ERIC B
				ART UNIT 1762 PAPER NUMBER

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/831,722	GROSSE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Eric B. Fuller	1762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 January 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 23-28,31 and 33-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 25-28 and 34-36 is/are allowed.
- 6) Claim(s) 23,24,31,33 and 37-45 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 27, 2006 has been entered.

### ***Response to Arguments***

Applicant's amendments and corresponding arguments have been found convincing. The rejections of the previous Office Action have been withdrawn. The applicant's arguments are moot in view of the new grounds of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23, 24, 31, 33, and 37-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moisan et al. (US 6,224,836) in view of the applicant's admitted prior art.

Moisan discloses a device for producing a plasma comprising a microwave generator (56) that launches microwaves through a launching structure (structure between generator (56) and flange (26) in figure 6) and into a guide structure (24) having therein holes (38) through which a dielectric tube carrying a gas passes and to which the microwaves are concentrated to form a plasma region in the tube in the area of the holes (38) (see figures 5 and 6 and col. 5, line 1 to col. 7, line 10). The plasma is used to clean exhaust gases, which encompasses chemically reacting gases. Provision of oxygen in the gas is disclosed at col. 6, line 65. A microwave frequency of 2.45 GHZ is disclosed at col. 6, line 29.

The reference does not explicitly teach a hole diameter within the applicant's range. However, the applicant admits on page 5, second paragraph, of the specification that the hole diameter being within 50-1000 microns is typical. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to use such hole diameters in the process taught by Moisan. By doing so, one would have a reasonable expectation of success, as the applicant has admitted the art recognized suitability of using such values.

As to claims 40, 41, and 43, Moisan is silent as to the pressure and flow rate of the gas in the tube, and the power of the microwave energy. Because it is well established that "Where principal difference between claimed process and that taught

by the reference is a temperature difference, it is incumbent upon applicants to establish criticality of that difference", see Ex Parte Khusid 174 USPQ 59 (Bd. of Appeals 1971), and because this principle is clearly applicable other process parameters such as pressure, flow rate, power applied, etc, as is claimed in each of the dependent claims, it would have been obvious to use values for these parameters as claimed absent evidence showing a criticality for using the claimed values.

***Allowable Subject Matter***

Claims 25-28 and 34-36 are allowed, as indicated in previous Office Actions.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric B. Fuller whose telephone number is (571) 272-1420. The examiner can normally be reached on Mondays through Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim Meeks, can be reached on (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



EBR



TIMOTHY MEEKS  
SUPERVISORY PATENT EXAMINER